

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE: TIMEKEEPERS, INC. <i>Debtor.</i>	§ § § § § § § § § §	CASE NO. 24-51101-MMP CHAPTER 11
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**OBJECTION OF ADVANTAGE BUSINESS CAPITAL, INC. D/B/A FAR WEST
CAPITAL TO DEBTOR’S MOTION TO USE CASH COLLATERAL**

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

COMES NOW, Advantage Business Capital, Inc. d/b/a Far West Capital (“**Far West**”), and hereby objects to the Debtor’s *Motion for Authority to Use Cash Collateral* [Docket No. 3] (the “**Cash Collateral Motion**”). Far West objects to the Cash Collateral Motion to the extent Debtor intends to collect and use proceeds of accounts that were sold to Far West under a factoring agreement and that, therefore, belong to Far West.

BACKGROUND

1. This case was commenced by the Debtor, Timekeepers, Inc. (the “**Debtor**”), when it filed a voluntary petition for chapter 11 relief on June 11, 2024 (the “**Petition Date**”).
2. Prior to the Petition Date, Far West provided working capital financing to the Debtor pursuant to an *Accounts Receivable Purchasing Agreement* dated February 14, 2018 (as amended, the “**ARPA**”). A true and correct copy of the ARPA is attached hereto as Exhibit A.
3. Under the ARPA, Far West has the right (but not the obligation) to purchase accounts receivable that are offered for sale by the Debtor from time to time. Accounts that are

purchased and owned by Far West pursuant to the ARPA are referred to herein as “**Purchased Accounts.**” Purchased Accounts are assigned to Far West, which then becomes the sole and absolute owner of the Purchased Accounts with the sole right to collect the Purchased Accounts.

4. To the extent that collections on the Purchased Accounts are insufficient to satisfy the Debtor’s obligations under the ARPA, Far West has a right of recourse against the Debtor. The shortfall in collections becomes a debt or “Obligation” under the ARPA, which is secured by a blanket lien on substantially all of the Debtor’s personal property, including but not limited to inventory, equipment, accounts (other than Purchased Accounts), instruments, and general intangibles.

5. In the parlance of the ARPA, the term “Net Funds Employed” is a measure of the Debtor’s total potential Obligations—that is, the amount that the Debtor would owe Far West if all Purchased Accounts prove uncollectible. As of the Petition Date, Far West had Net Funds Employed of approximately \$123, 081.80, and owned Purchased Accounts with a face amount of approximately \$167,349.74. Purchased Accounts are identified in the attached Purchased Account Schedule, attached hereto as Exhibit B.

**THE PURCHASED ACCOUNTS ARE NOT PROPERTY OF THE BANKRUPTCY
ESTATE AND CANNOT BE USED BY DEBTOR**

6. As an initial matter, it bears noting that Far West is not named as a secured creditor in the Debtor’s Motion despite the fact that over the last six years the Debtor has regularly factored accounts with Far West under the ARPA. To secure the Debtor’s recourse obligations under the ARPA, the Debtor granted Far West a security interest in substantially all of its existing and future assets, which security interest was duly perfected by the filing of a UCC1 financing statement with the Texas Secretary of State, on January 30, 2018, a true and correct copy of which is attached

hereto as Exhibit C. Far West's security interest is first in priority vis a vis the other creditors identified in the Motion.

7. Debtor seeks to use cash that either: (a) belongs to Far West because it constitutes proceeds of Purchased Accounts; or (b) constitutes Far West's cash collateral. To the extent that the Debtor receives payment on Purchased Accounts, the proceeds belong to Far West, and the Debtor has absolutely no right to use such proceeds, spend such proceeds, or commingle such proceeds with the Debtor's other assets. Further, even assuming that the Debtor is not collecting or using proceeds of Purchased Accounts, the cash in the Debtor's possession constitutes Far West's cash collateral.

8. Far West does not oppose the Debtor's use of cash collateral representing proceeds of nonfactored accounts (ie, accounts that were not sold to Far West), subject to adequate protection in the form of replacement liens on all post-petition inventory and accounts receivable acquired by the Debtor since the filing of the petition generated by the use of cash collateral. However, Far West strongly opposing any attempt by the Debtor to collect the Purchased Accounts or use cash proceeds of the Purchased Accounts.

WHEREFORE, Far West respectfully requests that the Court deny the Debtor's Cash Collateral Motion, and grant Far West such other and further relief as the Court may deem just and proper.

Respectfully submitted this 12th day of June, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 12, 2024, a true and correct copy of the preceding was served to all parties requesting notice via the Court's CM/ECF system, on all persons consenting to such service, and on the persons indicated below.

Via U.S. Mail
Timekeepers Inc.
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Debtor

Via CM/ECF
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Debtor's Attorney

Via CM/ECF
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Assistant U.S. Trustee
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/s/ Teresa Ruiz Schober

Teresa Ruiz Schober